IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 739 OF 2003

Mansaram Ramji Bhahiram .. Appellant
V/s.
Deoram Shivram Thakare & Ors. .. Respondents

Mr. P.B. Shah with Ms. Smita Mane for the Appellant
None present for the Respondents

CORAM : ABHAY S. OKA, J.
DATED : 20TH APRIL, 2005

P.C.:-

1. Heard the learned counsel appearing for the Appellant. The Appellant is the original Plaintiff. Admittedly the Respondents are the legal representatives of the owner of the Suit property. Suit for injunction was filed by the Appellant/Plaintiff in which he claimed to be in possession, based on a receipt evidencing sale transaction, which was allegedly executed by the father of the Respondent Nos. 1 to 3. The Respondents filed a Counter claim for possession on the basis of title. The Trial Court dismissed the Suit and passed a decree in favour of the Respondents in the Counter Claim. The Trial Court held that the Appellant failed to establish that he was in possession from 2.12.1970 under the receipt. The Trial Court negated the plea of adverse possession raised by the Appellant. Appeal preferred by the Appellant has been dismissed by the First Appellate Court.

2. After having heard the learned counsel for the Appellant, I find that no case for interference is made

out. Perusal of the judgment of the Appellate Court

shows that only point argued before the Appellate Court was on the basis of the plea of adverse possession. The Appellate Court has recorded a finding that there is no evidence in support of the said plea of adverse possession. The plea to that effect in the Plaint is very vague. On this ground, plea of adverse possession has been negatived by the Appellate Court. There is no reason to find fault with the order of the Appellate Court.

3. Once plea of the adverse possession fails, the decree for possession in favour of the Respondents must follow as the ownership of the Respondents is admitted by the Appellant and the Counter Claim of the Respondents is governed by Article 65 of the Limitation Act. No substantial question of law arises. Second Appeal is dismissed.

(JUDGE)